

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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KUJTIM DEMIROVIC, RICHARD REINOSO,  
MURTO AVDALOVIC and SENAD PEROVIC, 15-cv-0327 (CLP)

Plaintiffs,

-against-

FRANKLIN ORTEGA,  
ROCIO UCHOFEN and  
P.O. ITALIANISSIMO  
RISTORANTE INC.,

*Defendants.*

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**Declaration of Scott A. Lucas in Further Support  
of Plaintiffs' Motion for a TRO**

Scott A. Lucas, having personal knowledge of the facts below, declares the truth of the following under penalty of perjury pursuant to 28 U.S.C. § 1746:

1. As Plaintiffs' counsel, I respectfully submit this Declaration in further support of Plaintiffs' motion pursuant to Fed. R. Civ. P. 64(a) and New York Civil Practice Law and Rules ("CPLR") 5229 for an Order that:

- (A) Defendants be "enjoined and restrained, with the same effect as if a restraining notice had been served upon [them] after judgment, from making or suffering any sale, assignment, transfer, or interference with any property in which [Defendants have] an interest [and specifying that] [t]hese restrictions shall apply until such time as judgment in this action has been entered." *Sequa Capital Corp. v. Nave*, 921 F.Supp. 1072, 1076 (S.D.N.Y. 1996);

- (B) Each Defendant shall separately provide, by November 27, 2017, the information and documents requested in the “Post-Verdict Interrogatories & Request for Documents Used to Calculate Net Worth” attached as Ex. “A” to Plaintiffs’ moving papers, together with a certification made under penalty of perjury that the interrogatory answers provided are true and that all of the requested documents have been provided; and
- (C) Defendants, after they have complied with their obligation to separately provide the information and documents requested in the “Post-Verdict Interrogatories & Request for Documents Used to Calculate Net Worth” attached as Ex. “A” to Plaintiffs’ moving papers, shall submit to depositions pursuant to NY CPLR 5229 on a date or dates that the parties shall agree upon.

## **Background**

2. Following the jury’s verdict on October 26, 2017, I orally moved for an Order that Defendants be temporarily restrained with the same effect as if a restraining notice had been served upon them after judgment, from making or suffering any sale, assignment, transfer, or interference with any property in which they have an interest. When making this application, I provided a paper copy of the motion papers that were docketed on ECF later that evening, and made clear that the motion did not concern property that is not otherwise available to satisfy a money judgment, such as payment of regular wages, utility bills, routine mortgage payments and the like.

3. Defendants agreed in open Court to the temporary restraint requested pending the outcome of a written motion for such relief, and the Court directed

Defendants to abide by the agreed-upon temporary restraint pending the outcome of this written motion for such relief.

### **There is No Basis for Denying the Relief Requested**

4. In their opposition papers, Defendants claim that the relief requested is unwarranted because Plaintiffs did not prevail on every one of their claims.

5. That is not a basis for denying the requested relief.

6. Defendants' *continued* insistence that their obviously falsified W-2 transaction journals – which purport to show the exact same hourly wage and tip totals week after week for extended periods of time, including when Plaintiffs were out of work or on vacation and when the Restaurant was closed for Hurricane Sandy – shows that Defendants have no regard for the truth. Litigants willing to lie to the Court without shame should not be rewarded with an exemption from the protections commonly available under CPLR 5229, especially since “the moving party need not make a particular showing of the danger of dissipation of assets.” *Coley v. Vannguard Urban Improvement Association, Inc.*, 2016 WL 7217641, at \*6 (E.D.N.Y. 2016).

7. The falsified W-2 transaction journals indicate that Defendants Ortega and the Restaurant have been falsifying non-existent wage data and submitting it to

the taxing authorities. This is not the type of conduct warranting an exemption from the protections commonly available under CPLR § 5229.

8. In addition, Defendants' opposition papers do not address the specific instances when Defendants violated and tried to violate the Court's orders in front of the jury. Defendants' longtime personal counsel (Bruce Behrins) was not only willing to engage in such behavior, but was filled with uncontrollable rage -- rather than contrition -- when one of his would-be violations of the Court's Orders was foiled, prompting him to use profanity against me in the Court's presence during a sidebar. That is not the type of conduct that exhibits a respect for the rule of law, or that justifies an exemption from the protections commonly available under CPLR § 5229.

9. The jury found that Plaintiffs did not receive any wages whatsoever for a period of almost six years. The failure to pay several hundred thousand dollars in workers' wages is a crime punishable by up to one year of imprisonment, NYLL § 198-a, regardless of Defendants' mental state. *People v. Vetri*, 309 N.Y. 401, 406 (1955).

10. Moreover, all Defendants, including Defendant Uchofen, were found liable for unlawfully retaliating against Plaintiffs. Although the jury only awarded nominal damages on the retaliation claim, court awarded liquidated damages of up to \$20,000 per Plaintiff are mandatory under NYLL § 215.2(a), and attorney's fees

are also available on that claim as well. *See Ela v. Destefano*, 869 F.3d 1198, 1204 (11<sup>th</sup> Cir. 2017) (confirming that where only nominal damages were awarded by jury, liquidated damages and attorney's fees should be awarded by court where there is a statutory grant of authority for same); *See also* Plaintiffs' pending motion for liquidated damages.

11. Finally, there is a body of case law regarding what it means for Defendants to be "enjoined and restrained with the same effect as if a restraining notice had been served upon them after judgment, and from making or suffering any sale, assignment, transfer, or interference with any property in which Defendants have an interest. There is no need or reason to confuse the situation by stating that Defendants are allowed to make "liberal" expenditures (whatever that may mean).

WHEREFORE, it is respectfully requested that Plaintiffs' motion be granted.

Dated: New York, New York  
November 1, 2017

/S/ Scott A. Lucas  
Scott A. Lucas